

11-17-2016

State v. Miller Respondent's Brief Dckt. 44200

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 44200
Plaintiff-Respondent,)	
)	Bonner County Case No.
v.)	CR-2015-6115
)	
GREGORY CLARK MILLER,)	
)	
Defendant-Appellant.)	
_____)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF BONNER**

HONORABLE BARBARA BUCHANAN
District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Gregory Clark Miller appeals from his sentence and denial of his Rule 35 motion.

Statement Of The Facts And Course Of The Proceedings

Miller repeatedly touched the genitals of two eight-year-old granddaughters. (PSI, pp. 3-4.) The state charged him with lewd conduct. (R., pp. 33-34.) Miller pled guilty pursuant to a plea agreement with the state. (R., pp. 38-47.) The district court imposed a sentence of 12 years with two years determinate. (R., pp. 52-54.)

Fourteen days after entry of judgment Miller filed a Rule 35 motion seeking reduction of his sentence. (R., pp. 59-62.) The district court denied the motion, concluding it was

persuaded that the primary objective of protecting society and the related goals of deterrence, rehabilitation and retribution are best achieved by imposing a period of incarceration. Miller's granddaughters, both eight years of age at the time of the offense, have been greatly harmed, and a period of incarceration is necessary to both punish Miller and act as a deterrent to others in the community who would commit similar crimes. Suspending Miller's prison time and placing him on probation, as requested in the Rule 35 motion, would minimize the seriousness of his crime and the harm suffered by his young granddaughters.

(R., p. 65.) Miller filed a notice of appeal timely from the denial of his Rule 35 motion. (R., pp. 68-70.)

ISSUES

Miller states the issues on appeal as:

- A. Did the trial court err in the manner it sentenced Mr. Miller?
- B. Did the trial court err by its order denying Rule 35 sentence reduction entered March 29, 2016?

(Appellant's brief, p. 7 (capitalization altered).)

The state rephrases the issues as:

- 1. Has Miller failed to show that the district court abused its sentencing discretion?
- 2. Has Miller failed to show that the district court abused its discretion in denying the Rule 35 motion?

ARGUMENT

I.

Miller Has Failed To Show That The District Court Abused Its Sentencing Discretion

A. Introduction

The district court imposed a sentence of 12 years with two years determinate upon Miller's conviction for lewd conduct with two of his granddaughters. (R., pp. 52-54.) On appeal Miller argues the district court abused its sentencing discretion because the sentence is "excessive" and a "misapplication" of sentencing factors because it "disproportionally emphasize[s] punishment over the various other factors." (Appellant's brief, p. 8.) Miller's argument is without merit, primarily because it relies upon a fabricated quote as its legal standard.

B. Standard Of Review

"We review the length of a sentence under an abuse of discretion standard." State v. Al-Kotrani, 141 Idaho 66, 70, 106 P.3d 392, 396 (2005). The appellate court independently reviews the record, "having due regard for the nature of the offense, the character of the offender, and the protection of the public interest." State v. Jeppesen, 138 Idaho 71, 76, 57 P.3d 782, 787 (2002). "In order to show that the sentence imposed was unreasonable, the defendant must show that the sentence, in light of the governing criteria, is excessive under any reasonable view of the facts." State v. Cannady, 137 Idaho 67, 73, 44 P.3d 1122, 1128 (2002). "In deference to the trial judge, this Court will not substitute

its view of a reasonable sentence where reasonable minds might differ.” State v. Stevens, 146 Idaho 139, 148-49, 191 P.3d 217, 226-27 (2008).

C. Review Of The Record Shows No Abuse Of Discretion By The District Court

In determining whether the sentencing court abused its discretion, the appellate court reviews all the facts and circumstances of the case. State v. Broadhead, 120 Idaho 141, 143, 814 P.2d 401, 403 (1991). To show an abuse of discretion the defendant must show that, in light of the governing criteria, the sentence was excessive, considering any view of the facts. Id. at 145, 814 P.2d at 405. The governing criteria, or objectives of criminal punishment, are: “(1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing.” Id. (quoting State v. Wolfe, 99 Idaho 382, 384, 582 P.2d 728, 730 (1978)).

“A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation, or retribution.” State v. McIntosh, 160 Idaho 1, 368 P.3d 621, 628 (2016) (citing State v. Lundquist, 134 Idaho 831, 836, 11 P.3d 27, 32 (2000)). “Abuse of discretion occurs if a sentence imposed is unreasonable, but a sentence is reasonable if it appears necessary, at the time of sentencing, to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution.” State v. Lawrence, 107 Idaho 867, 868, 693 P.2d 1069, 1070 (Ct. App. 1984) (citing State v. Toohill, 103 Idaho 565, 650 P.2d 707 (Ct. App.1982)). A court “is

not required to assess or balance all of the sentencing goals in an equal manner.” State v. Felder, 150 Idaho 269, 276, 245 P.3d 1021, 1028 (Ct. App. 2010).

In imposing sentence, the district court specifically considered: (1) the four goals of sentencing (Tr., p. 22, L. 20 – p. 23, L. 4); (2) mitigating factors such as Miller’s acceptance of responsibility, albeit only after he was confronted by family members (Tr., p. 23, Ls. 5-23); (3) the circumstances of the crime, including the trust Miller betrayed by sexually abusing his granddaughters and the harm he caused them (Tr., p. 23, L. 24 – p. 24, L. 9); (4) Miller’s lack of a criminal record, although this was less mitigating because such sex crimes are often hidden (Tr., p. 24, Ls. 9-16); and (5) that Miller had suffered no prior sexual victimization and had not acted under the influence (Tr., p. 24, Ls. 17-22). After looking “at all those things” the district court concluded “there has to be some punishment.” (Tr., p. 24, L. 23 – p. 25, L. 2.) In addition, the sentence should include a “message that you can’t hurt children.” (Tr., p. 25, Ls. 2-3.) The district court then rejected probation (including retained jurisdiction) and imposed a sentence of 12 years with two years determinate, which was “less” than it “might impose” if Miller “hadn’t taken responsibility.” (Tr., p. 25, Ls. 4-20.) This record shows no abuse of discretion.

Miller argues:

This sentence violates the established law in Idaho and as reflected in the U.S. Supreme Court’s decision that “retribution is not to be the dominant objective of criminal law”, but there is to be a balanced approach considering those other three (3) factors rejected or ignored by the Trial Court in this case.

(Appellant's brief, p. 12.) This argument fails for two reasons.

First, it fails because Miller's counsel simply fabricated the legal standard he quotes above. The actual quote is: "Retribution is *no longer* the dominant objective of the criminal law" Gregg v. Georgia, 428 U.S. 153, 183 (1976) (emphasis added) (quoting Williams v. New York, 337 U.S. 241, 248 (1949))¹ ("Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence.")). By changing "no longer" to "not to be" Miller's counsel substantively changed the meaning of the quote.

This change in meaning is unsupported. In Gregg, the precedent Miller's counsel apparently relies on even though his quote is fabricated, the Supreme Court of the United States, addressing the constitutionality of capital punishment, stated: "The death penalty is said to serve two principal social purposes: retribution and deterrence of capital crimes by prospective offenders." 428 U.S. at 183. The Court stated that retribution "serves an important purpose." Id. (internal quotes omitted). "When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they

¹ In Williams the Court addressed the constitutionality of a district court considering a PSI at sentencing where the defendant claimed that evidence gathered outside the court and not subject to confrontation could not be considered as a matter of due process. The Court ultimately held the procedure did comply with due process because the district court properly considered facts beyond those underlying the crime in order that "the punishment should fit the offender and not merely the crime." Williams, 337 U.S. at 247. Thus, because sentencing courts consider factors related to the defendant and not just his crime, retribution was "no longer" the dominant consideration in criminal law. Id. at 248-49. The Court did not, however, state that a sentence could not be based dominantly, or even exclusively, upon the nature of the offense committed.

‘deserve,’ then there are sown the seeds of anarchy of self-help, vigilante justice, and lynch law.” Id. (internal quotes omitted). “Retribution is no longer the dominant objective of the criminal law, but neither is it a forbidden objective nor one inconsistent with our respect for the dignity of men.” Id. (internal quotes and citation omitted). Ultimately the legislative decision to make the death penalty applicable to murder in certain situations, based on purposes of retribution and deterrence, did not violate the Eighth Amendment. Id. at 183-87. Certainly if retribution and deterrence are under some circumstances sufficient to support the death penalty, they are sufficient to support the two-year fixed sentence for Miller’s repeated sexual abuse of his eight-year-old granddaughters in this case. Gregg does not impose a legal prohibition against retribution being the “dominant objective” in sentencing, and Miller’s counsel had to fabricate a quote to make it seem so.

The actual law does not support Miller’s argument. As set forth above, retribution is an acceptable goal of sentencing, and a sentencing court “is not required to assess or balance all of the sentencing goals in an equal manner.” State v. Felder, 150 Idaho 269, 276, 245 P.3d 1021, 1028 (Ct. App. 2010). “[P]unishment is justified under *one or more* of three principal rationales: rehabilitation, deterrence, and retribution.” Hall v. Florida, ___ U.S. ___, 134 S. Ct. 1986, 1992 (2014) (brackets original, emphasis added) (quoting Kennedy v. Louisiana, 554 U.S. 407, 420 (2008)). Even if retribution were the “dominant” consideration by the trial court, such would not be an abuse of discretion under applicable law.

Second, Miller's argument is not supported by the record. The district court specifically considered all four goals of sentencing: protection of society, deterrence, rehabilitation and retribution. (Tr., p. 22, L. 25 – p. 23, L. 4.) The first factor the district court considered was rehabilitation, engaging in an explanation about how Miller's acceptance of responsibility and voluntary participation in counselling was mitigating, but the mitigation was offset by the fact he accepted responsibility and entered counselling only after being confronted by family members and not before the sexual abuse was repeated. (Tr., p. 23, Ls. 9-23.) The district court ultimately identified this factor as the reason it gave a lesser amount of prison time than it might otherwise have done. (Tr., p. 25, Ls. 10-20.) As noted above, the district court in fact considered many aggravating and mitigating circumstances in the context of the four goals of sentencing. (Tr., p. 22, L. 20 – p. 25, L. 20.) The record simply does not support Miller's claim that retribution was the "dominant" factor at sentencing.

Ultimately Miller argues that the district court gave retribution too much weight. However, his crime was indeed serious and caused a great deal of harm. This was properly considered and within the discretion of the district court. Miller has failed to show an abuse of discretion.

II.
Miller Has Failed To Show That The District Court Abused Its Discretion In
Denying The Rule 35 Motion

A motion for reduction of sentence under Rule 35 is essentially a plea for leniency, addressed to the sound discretion of the court. State v. Knighton, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006). To show a district court abused its discretion in denying a Rule 35 motion, an appellant must show that the sentence is excessive in light of new or additional information provided to the district court in support of the motion. State v. Adamcik, 152 Idaho 445, 484-85, 272 P.3d 417, 456-57 (2012); State v. Huffman, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). Here Miller does not claim he submitted new or additional information (Appellant's brief, p. 12), and the record does not disclose any new information (R., pp. 59-62). Thus, Miller has failed to show an abuse of discretion.

CONCLUSION

The state respectfully requests this Court to affirm Miller's sentence and the denial of his Rule 35 motion.

DATED this 17th day of November, 2016.

/s/ Kenneth K. Jorgensen _____
KENNETH K. JORGENSEN
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 17th day of November, 2016, served two true and correct copies of the foregoing BRIEF OF RESPONDENT by placing the copies in the United States mail, postage prepaid, addressed to:

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